IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8439 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAKESH GOVINDBHAI VARIA

Versus

ADDL. DIRECTOR GENERAL OF POLICE (ADMN.)

Appearance:

1. Special Civil Application No. 8439 of 2001

MR MITUL K SHELAT for Petitioner No. 1

MR PR ABICHANDANI Ld. AGP for Respondents No. 1-2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 06/11/2001

ORAL JUDGEMENT

Heard learned Counsel Mr. Mitul Shelat for the petitioner and Mr. PR Abichandani for the respondents.

Rule. Mr PR Abichandani learned AGP waives

service of rule on behalf of the respondents.

The petitioners seeks to challenge the decision and order dated 30.11.1999 passed by Addl. Director General of Police (Admn.), State of Gujarat, whereby the petitioner's application for compassionate appointment in accordance with the Government Resolutions and Circulars has been rejected.

It is the case of the petitioner that his father late Shri Govind Vitthalbhai Varia was serving on the post of Head Constable at the Odhav POlice Station in Ahmedabad. Late Shri Govindbhai expired on 12.9.1998 while discharging his duties. The petitioner submitted his application for compassionate appointment on 3.11.1998 along with the necessary documents as required by the competent authority. The competent authority vide his order dated 30.11.1999 rejected the application of the petitioner on the ground that the total monthly income of the family of the petitioner was Rs. 2622/ the said income was in excess of the stipulated income criteria of Rs. 2500/, and therefore, the petitioner was not entitled to the appointment on compassionate ground.

It is submitted by the learned counsel appearing for the petitioner that the authority has committed an error in calculating the amount of income earned by the family of the petitioner. It is submitted that the Government has vide its decision dated 4.11.1998 laid down the manner in which the income is to be calculated for assessing the eligibility of an applicant. The said decision provides that while considering the family pension received by the family of the deceased the authority shall take into consideration the simple pension to be received by the said family. Simple pension is the pension receivable by the family of the deceased after the period of seven years from the date of the receipt of the first installment of family pension. The petitioner has annexed the certificate issued by the Addl. Treasury Officer, Pay and Pension Office dated 8.7.1999. The said authority has certified that the mother of the petitioner Smt. Madhuben G. Varia is receiving family pension of Rs. 2067/- + DA Rs. 455/ + Medical Allowance Rs. 100/- i.e. a total of Rs. 2622/ p.m. as on date. It is further certified that from 12.9.2005 she will be entitled to received an amount of Rs. 1275/- + DA + Medical Allowance.

The learned counsel has drawn my attention to the impugned order dated 30.11.1999. From the said order, it is clear that the authorities have considered the amount

of Rs. 2622/ p.m. (Family Pension of Rs. 2067/ + DA Rs. 455/ + Medical Allowance of Rs. 100). The authority has therefore, taken into consideration the amount received by the family of the deceased as on the current date and not the amount of simple pension to be received by the family of the deceased after a period of seven years i.e. from 12.9.2005. If the family pension is considered at the simple rate the total income receivable by the family of the deceased would come to Rs. 1830/(Rs. 1275/- + DA Rs. 455/- + M.A. Rs. 100/-). The petitioner would therefore be entitled to appointment on compassionate basis as per the Government Resolutions and Circular of the State Government. It is not the case of the other side that the family of the deceased has any other source of income or has any valuable immovable properties. The denial is based on single proposition that the income of the family is exceeding the limits in view of the income of family pension. It is also not disputed that the authority while calculating the income of the family of the petitioner has considered the double pension received by the family and not the simple pension as is provided in the order dated 4.11.1988. In view of the above, the decision of the respondent in rejecting the application of the petitioner for appointment on compassionate ground on the basis that the income of the family of the petitioner is in excess of the permissible limit of Rs. 2500/, is erroneous and is contrary to the policy adopted by the State Government itself. In view of the same the order dated 30.11.1999 is quashed and set aside. The respondents are directed to decide the application of the petitioner on merits and considering him to be eligible as far as the income criteria is concerned. The respondent- department is expected to take the decision within eight weeks from the date of receipt of this order.

Rule made absolute with no order as to costs.

(C.K. BUCH, J.)

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